

# United States District Court

for the  
Western District of New York

United States of America

v.

Case No. 19-mj- 5212

**STEPHEN NIVER**

*Defendant*

## CRIMINAL COMPLAINT



I, the complainant in this case, state that the following is true to the best of my knowledge and belief.

Between on or about April 24, 2019, and on or about April 30, 2019, in the Western District of New York, the defendant, STEPHEN NIVER, did knowingly possess child pornography, as defined in Title 18, United States Code, Section 2256(8), that involved a prepubescent minor who had not attained 12 years of age, in violation of Title 18, United States Code, Section 2252A(a)(5)(B) and 2252A(b)(2).

This Criminal Complaint is based on these facts:

☒ Continued on the attached sheet.

*Complainant's signature*

JUSTIN J. BURNHAM  
SPECIAL AGENT  
HOMELAND SECURITY INVESTIGATIONS

*Printed name and title*

Sworn to before me and signed in my presence.

Date: August 23, 2019

*Judge's signature*

City and State: Buffalo, New York

MICHAEL J. ROEMER  
UNITED STATES MAGISTRATE JUDGE

*Printed name and title*

**AFFIDAVIT IN SUPPORT OF COMPLAINT**

STATE OF NEW YORK     )  
COUNTY OF ERIE        )     SS:  
CITY OF BUFFALO        )

I, JUSTIN J. BURNHAM, being duly sworn, depose and state:

**INTRODUCTION**

1. I am a Special Agent with Homeland Security Investigations (HSI) and have been so employed since October of 2008. I am currently assigned to the Buffalo Field Office of HSI and I am assigned to the Child Exploitation Unit (CEU). As a member of the CEU, I investigate the sexual exploitation of children, including possession, receipt, and the production of child pornography, coercion and enticement, and the transfer of obscene material to minors, all in violation of Title 18, United States Code, Sections 2251, 2252, 2252A, 2422, and 1470. I have received specialized training in the area of child pornography and child exploitation and I have had the opportunity to observe and review numerous examples of child pornography, as defined in Title 18 United States Code, Section 2256.

2. I make this affidavit in support of a criminal complaint charging Stephen NIVER (DOB: 7/03/19XX) (hereinafter "NIVER"), with violations of Title 18, United States Code, Section 2252A(a)(5)(B) (Possession of Child Pornography).

3. The information contained in this affidavit is based upon my personal knowledge and observation, my training and experience, conversations with other law enforcement officers and witnesses, and a review of documents and records. Because this affidavit is being submitted for the limited purpose of establishing probable cause in support of a criminal complaint charging NIVER with the above offenses, I have not included each and every fact known to me concerning this investigation. I have set forth only the facts necessary to establish probable cause to believe that NIVER knowingly violated Title 18, United States Code, Sections 2252A(a)(5)(B).

#### **NYS PAROLE ENCOUNTER**

4. On February 26, 2014, the defendant was convicted of one count of Promoting a Sexual Performance By a Child Less than 17 years of age, pursuant to New York Penal Law § 263.15. Pursuant to this statute, a defendant is guilty of Promoting a Sexual Performance of a Child when, knowing the character and content thereof, he produces, directs or promotes any performance which includes sexual conduct by a child less than seventeen years of age. The defendant was subject to conditions of parole as a result of this conviction.

5. On April 30, 2019, New York State Parole (NYSP) traveled to the residence of NIVER located in Niagara Falls, New York, and requested he provide a urine sample in accordance with his release conditions. The urine sample tested positive for cocaine and NIVER admitted he had recently used cocaine. A physical search of NIVER's bedroom resulted in the discovery of a cellular telephone, specifically a "flip phone," which he was authorized to possess pursuant to his release conditions. A search of that telephone pursuant

to his release conditions resulted in the discovery of a Facebook password reset code indicating NIVER was using another electronic device to access Facebook, however no other electronic device was found at that time. NIVER was subsequently taken into custody for violating his probation as it related to his drug use and detained at the Niagara County Jail.

6. NIVER's recorded telephone calls made from the Niagara County Jail were subsequently acquired and reviewed. The following documents portions of some of the telephone calls made by NIVER.

7. On May 1, 2019 a telephone call was made by NIVER to telephone number (716) 804-43XX, a telephone number used by NIVER'S roommate. The following is an excerpt from this conversation and is not meant to be a verbatim transcript of the conversation.

NIVER: Didn't I show you before where?

ROOMMATE: No.

NIVER: Under the spaghetti.

ROOMATE: Okay right.

NIVER: Dude, do the right thing with it, get all the way rid of it.

ROOMATE: I'm gonna get rid of it.

NIVER: I would say like destroy it you know.

ROOMATE: I'll take it somewhere where no one is watching and I'll smash it on the sidewalk.

NIVER: I appreciate it. I've been worried sick about that.

8. On May 2, 2019, NYS Parole traveled to the residence of NIVER and conducted another search of the residence pursuant to NIVER's release conditions. During the search, an Alcatel cellular smartphone ("Phone 1") was found on the top shelf of the cupboard under spaghetti as described by NIVER in his recorded telephone call with his roommate excerpted above.

9. On May 2, 2019, NYS Parole traveled to the Niagara County Jail and met with NIVER. During this interview, NIVER admitted Phone 1 found in the kitchen drawer was his and he provided the pattern code to unlock the phone. NIVER admitted he used a Facebook account under the name of "Tim Duncan", that he had a Photobucket account, and possibly some adult pornography on Phone 1.

10. On May 2, 2019, NIVER called telephone number (716) 807-59XX and had a conversation with his grandmother. The following is an excerpt from this conversation and is not meant to be a verbatim transcript of the conversation.

NIVER: I just talked to my parole officer. I might be in more trouble than I thought.

Grandmother: Why?

NIVER: They went back and found that thing.

Grandmother: Oh my God. The thing Ray was worried about?

NIVER: Yeah so I called him right after I talked with you and I told him about it and I told him to get rid of it, destroy it, and I guess he didn't. They went back last night around 9 or 10 o'clock. I don't know why he waited around, but he didn't get rid of it fast enough and they came and found it. This is the worst thing that could've possibly happened.

Grandmother: UI, is there anything on there?

NIVER: I had an email account, uh, a fake Facebook, a bunch of dumb shit I shouldn't have had.

Grandmother: I don't know. Dumb is the right word. What were you thinking? I mean there are rules for a reason.

Later, the conversation continued.

NIVER: I told him how to unlock the phone and I told him about the email address and I told him everything they ask me. See that's going to help me, they won't have to send it to a lab, they can just open it up and see that, you know, but...There is no denying it because I had my old pictures on there from back in the day. There is no point of even denying it.

...

NIVER: That is what I was so worried about was him finding that. And I felt way better after I told him (Ray) about it so he could get rid of it and then my worst nightmare frickin came true when he came and saw me and said Mr. NIVER, do you want to tell me about this phone. I mean come on, how the hell could they possibly know about that.

Grandmother: Aye, oh boy.

NIVER: I gotta talk to Ray too, he was supposed to get rid of that the minute I talked to him.

Grandmother: I know.

NIVER: What the hell man?

Later in the conversation, NIVER said, "Now I gotta go back to frickin prison."

11. On May 2, 2019, a telephone call was made by NIVER to telephone number (716) 201-77XX used by an unknown male (UM). The following is an excerpt from this conversation and is not meant to be a verbatim transcript of the conversation.

NIVER: Yo, this shit just got worse bro.

UM: What?

NIVER: They went back, they doubled back on my spot last night and found my phone.

UM: What you got on your phone?

NIVER: I'm just not allowed to have it. I'm not allowed to have it period.

UM: Oh my God.

NIVER: Yeah, and I might be looking at a new charge for having it.

UM: For having a smart phone.

NIVER: UI because its got email and Facebook and shit.

UM: Dude, why would you do that?

NIVER: I kept it well hidden, there's no way they would've found it and they looked at my other phone and I had a text message that said reset your Facebook password or whatever and I didn't even do that. I don't know how I even got that message. It must have been whoever had that number before me.

UM: You didn't put no locks on your phone?

NIVER: Um, there's a lock on the Android phone but they're going to send it to the lab anyway and the lab is gonna get it unlocked. So I ended up if you tell us now what's on it then it will be less trouble you're in so I told em yeah I gotta fake Facebook and a stupid email I wasn't even using.

UM: Oh my God bro.

NIVER: So I'm getting a new charge probably.

12. On May 2, 2019, a telephone call was made by NIVER to his roommate at telephone number (716) 804-43XX. The following is an excerpt from this conversation and is not meant to be a verbatim transcript of the conversation.

ROOMMATE: What's up?

NIVER: Yo, what happened man?

ROOMMATE: Parole came by this morning and did a search

NIVER: They said they came last night.

ROOMMATE: They came by last night, but they didn't find it last night. They came back this morning and found it.

NIVER: Why didn't you get rid of it?

ROOMMATE: Because they came at like 7:30 this morning, they woke me up knocking on the door.

NIVER: I thought you were getting rid of it last night?

ROOMMATE: One, I can't get out after 7 o'clock.

NIVER: Ah, I was thinking about telling you to dip it in water and then put it in the garbage and then take it out with the trash. That's what I was thinking about telling you. And I was worried this whole time they were gonna find it and then they come and see me this morning and they say hey bro tell me about this cell phone. I was like what, my worst nightmare. I'm getting a new charge now probably.

...

NIVER: Damn bro. Now I'm looking at a new charge.

ROOMMATE: Shit. I didn't think they'd be by again, I'd didn't think they'd come back again. I didn't even think about that shit.

NIVER: Honestly, I was thinking about telling you, I don't know why, I was thinking about telling you get rid of it last night just in case they were listening to the phone, you know.



13. On May 6, 2019, New York State Parole (NYSP) Officer Tim Gillis met with HSI SA Justin Burnham at the HSI Buffalo office and gave Phone 1 to SA Burnham. Phone 1 was subsequently provided to an HSI computer forensic analyst who conducted an analysis of the device.

### FORENSIC EXAMINATION

14. During the forensic review by HSI of Phone 1, approximately 25 images of suspected child pornography were discovered, including images depicting the genitalia of toddlers, hidden on the phone with the use of an application called "HideltPro." This mobile phone application is disguised as an Audio Manager application, which can be used to turn the volume of the telephone up and down. Computer forensic analysts discovered that if one were to "Long press" on the Audio Manager title and enter the user pin "4536" the actual Hide It Pro application will launch. The Hide It Pro application is designed to be a secret vault of hidden photos, videos, messages, applications etc. In addition, the email address [duncant488@gmail.com](mailto:duncant488@gmail.com) was found to connected to the "HideltPro" application as recovery email. It should be noted that NIVER admitted he used a Facebook account in the name of "Tim Duncan." The forensic analysis of Phone 1 further indicated that the dates associated with the images fall within the range of April 24, 2019, through April 30, 2019.

15. Descriptions of some of this child pornography found on Phone 1 include:

- a. **"05307C935EDAC009FEAAE9CDBE286B60.jpg"** – This image file depicts the genitalia of a prepubescent minor female. The focal point and entirety of the image is the minor female's genitalia. A couple of fingers of what is believed to be an adult are seen on the outsides of the image and are being used to spread open the labia of the minor female in an unnatural way. The image is believed to be designed to elicit a

sexual response in the viewer and meets the federal definition of child pornography.

- b. **"E60251B882FDDDB7B19647FD85764BFE6.jpg"** – This image file depicts the genitalia of a prepubescent minor female. The focal point and entirety of the image is the minor female's genitalia. A couple of fingers of what is believed to be an adult are seen on the outsides of the image and are being used to spread open the labia of the minor female in an unnatural way. The image is believed to be designed to elicit a sexual response in the viewer and meets the federal definition of child pornography.
- c. **"F2E929EE17CDF76653BD9011344FFC79.jpg"** – This black and white image file depicts the genitalia and anus of a prepubescent minor female. The focal point and entirety of the image is the minor female's genitalia and anus. The image is believed to be designed to elicit a sexual response in the viewer and meets the federal definition of child pornography.

### CONCLUSION

16. Based upon the foregoing, I respectfully submit that I have probable cause to believe that NIVER, has violated Title 18, United States Code, Section 2252A(a)(5)(B) (Possession of Child Pornography).



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JUSTIN J. BURNHAM  
Special Agent  
Homeland Security Investigations

Sworn to before me this

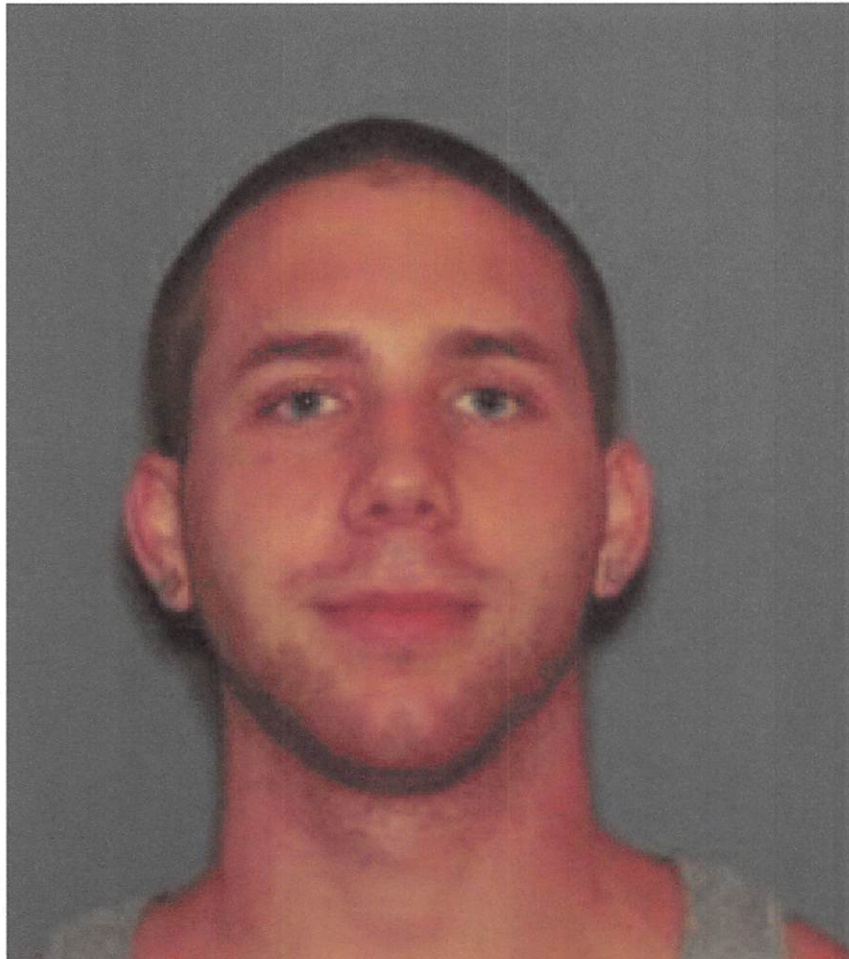
23<sup>rd</sup> day of August, 2019



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MICHAEL J. ROEMER  
United States Magistrate Judge

ATTACHMENT A



Name:	Stephen Niver
Date of Birth:	07/03/XX
SSN:	XXX-XX-4536
Address:	Niagara County Jail
Height:	5'8"
Weight:	192
Hair:	Brown
Eyes:	Blue